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California Office of Historic Preservation Technical Assistance Series #1

California Environmental Quality Act and Historical Resources: Questions and Answers

The California Environmental Quality Act (CEQA) is the principal statute mandating environmental assessment of projects in California. The purpose of CEQA is to evaluate whether a proposed project may have an adverse effect on the environment and, if so, if that effect can be reduced or eliminated by pursuing an alternative course of action or through mitigation. CEQA is part of the Public Resources Code sections 21000 et seq.

The California Environmental Quality Act Guidelines (CEQA Guidelines) are the regulations that govern the implementation of CEQA. The CEQA Guidelines are codified in the California Code of Regulations section 15000 et seq. and are binding on state and local governments.

Public agencies are required to adopt implementing procedures for administering their responsibilities under CEQA. These procedures include provisions regarding how the agency will process environmental documents and provide for adequate comment, time periods for review, and lists of permits that are ministerial actions and projects that are considered categorically exempt. Agency procedures should be updated within 120 days after the CEQA Guidelines are revised. The most recent amendments to the CEQA Guidelines occurred in November 1998 and included specific consideration of historical resources. An agency's adopted procedures are a public document (CEQA Guidelines 15022).

What is the California Register and what does it have to do with CEQA?

Historical resources are recognized as a part of the environment under CEQA (PRC 21002(b), 21083.2, and 21084.1). The California Register is an authoritative guide to identify the state's historical resources and to indicate what properties are *to be protected from substantial adverse change*.

The California Register includes resources listed in or formally determined eligible for listing in the National Register of Historic Places, as well as some California State Landmarks and Points of Historic Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be significant

resources for purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC 5024.1, CCR Title 14, 4850).

The California Register statute (PRC 5024.1) and regulations (CCR, Title 14, 4850 et seq) require that at the time a local jurisdiction *nominates* an historic resources survey for listing in the California Register, the survey must be updated if it is more than five years old. This is to ensure that a *nominated survey* is as accurate as possible at the time it is listed in the California Register. However, this does not mean that resources identified in a survey that is more than five years old need not be considered “historical resources” for purposes of CEQA. Unless a resource listed in a survey has been demolished, lost substantial integrity, or there is a preponderance of evidence indicating it is otherwise no longer eligible for listing, a lead agency should consider the resource to be potentially eligible for the California Register.

However, a resource does not need to have been identified previously either through listing or survey. Lead agencies have a responsibility to evaluate whether historical resources are present and could be impacted by a proposed project (PRC 21084.1, CEQA Guidelines 15064.5(3)).

Are archeological sites part of the California Register?

An archeological site may be considered an historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC 5020.1(j)) and if it meets the criteria for listing on the California Register (CCR Title 14, 4850).

CEQA provides somewhat conflicting direction regarding the evaluation and treatment of archeological sites. The most recent amendments to the CEQA Guidelines try to resolve this ambiguity by directing that lead agencies should first evaluate an archeological site to determine if it meets the criteria for listing on the California Register. If an archeological site is an historical resource (i.e., listed or eligible for listing in the California Register) it must be protected from substantial adverse change like any other historical resource (PRC21084.1; PRC 21083.2(l)).

If an archeological site is not an historical resource, but meets the definition of a “unique archeological resource” as defined in PRC 21083.2, then it should be treated in accordance with the provisions of that section.

When does CEQA apply?

Resources listed in, or determined to be eligible for listing in, the California Register are resources that must be given consideration in the CEQA process.

All projects undertaken by a public agency are subject to CEQA. This includes projects undertaken by any state or local agency, any special district (e.g., a school district), and any public college or university.

CEQA applies to discretionary projects undertaken by private parties. A discretionary project is one that requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued. Some common discretionary decisions include placing conditions on the issuance of a permit, delaying demolition to explore alternatives, or design review of an historical project or a replacement project that follows the demolition of an historical resource. Judgement or deliberation may be exercised by the staff of a permitting agency or by a board, commission, or elective body.

CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. Generally ministerial permits require the public official to determine only that the project conforms with applicable zoning and building code requirements and that applicable fees have been paid.

What is “substantial adverse change” to an historical resource?

Substantial adverse change includes demolition, destruction, relocation, or alternation such that the significance of an historical resource would be impaired (PRC 5020.1(q)).

While demolition and destruction are fairly obvious significant impacts, it is more difficult to assess when change, alteration, or relocation crosses the threshold of substantial adverse change. The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of an historical resource that convey its historical significance (i.e. its character-defining features) can be considered to materially impair the resource’s significance.

How can “substantial adverse change” be avoided or mitigated?

A project that has been determined to conform with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* can generally be considered to be a project that will not cause a significant impact (CEQA Guidelines 15126.4(b) (1)). In fact, in most cases if a project meets the *Secretary of Interior’s Standards for the Treatment of Historic Properties* it can be considered categorically exempt from CEQA (CEQA Guidelines 15331).

Mitigation of significant impacts must lessen or eliminate the physical impact that the project will have on the historical resource. This is often accomplished through redesign of a project to eliminate objectionable or damaging aspects of the project (e.g., retaining rather than removing a character-defining feature, reducing the size or massing of a proposed addition, relocating a structure outside the boundaries of an archeological site).

Relocation of an historic resource may cause an adverse impact on the resource. However, in situations where relocation is the only feasible alternative to demolition, relocation may mitigate below a level of significance provided that the new location is compatible with the original character and use of the historical resource and the

resource retains its eligibility for listing on the California Register (CCR Title 14, 4852(d)(1)).

In most cases the use of drawings, photographs, and/or displays does not mitigate the physical impact on the environment caused by demolition or destruction of an historical resource (CEQA Guidelines 15126.4(b)). However, CEQA requires that all feasible mitigation be undertaken even if it does not mitigate below a level of significance. In this context, recordation serves a legitimate archival purpose. Photographic and drawing mitigation requirements should be proportionate with the significance of the resource.

Avoidance and preservation in place are the preferable forms of mitigation for archeological sites. When avoidance is infeasible, a data recovery plan should be prepared which adequately provides for recovering scientifically consequential information from the site. Studies and reports resulting from excavations must be deposited with the California Historical Resources Regional Information Center. Merely recovering artifacts and storing them does not mitigate impacts below a level of significance.

Where can I get more information about CEQA and historical resources?

Information regarding CEQA is available through the Resources Agency website at: <http://ceres.ca.gov/ceqa>. The CEQA statutes and the Guidelines as well as recent CEQA court decisions can be accessed at this address.

The regulations governing the California Register of Historical Resources are available at the OHP website: <http://ohp.cal-parks.ca.gov/programs/FAQs/faq12.htm>. Other California statutes are available at: <http://www.leginfo.ca.gov/calaw.html>. The State Office of Historic Preservation publishes a source book of California statutes and regulations which effect historical resources, *California State Law and Preservation*. This can be obtained by contacting the OHP at (916) 653-6624 or at calshpo@quiknet.com.

Two publications from the Governor's Office of Planning and Research, *CEQA and Historical Resources* and *CEQA and Archeological Resources*, are available at the CERES website or may be obtained from the State Office of Historic Preservation. These two publications do not reflect the latest changes in the CEQA Guidelines but are nonetheless helpful in their detailed discussion of the CEQA process.

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